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Archbishop of San Francisco

15 UNITED STATES BANKRUPTCY COURT

16 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

17  
18 In re  
19 THE ROMAN CATHOLIC ARCHBISHOP  
OF SAN FRANCISCO,  
20 Debtor and  
21 Debtor in Possession.

Case No. 23-30564

Chapter 11

**DEBTOR'S EMERGENCY MOTION TO  
CONTINUE INSURANCE PROGRAMS**

Date: August 24, 2023

Time: 1:30 p.m.

Location: Via ZoomGov

Judge: Hon. Dennis Montali

*Hearing Requested on Shortened Time*

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1 The Roman Catholic Archbishop of San Francisco (“RCASF” or “Debtor”), the debtor and  
2 debtor in possession in the above-captioned chapter 11 case (the “Bankruptcy Case”), hereby moves  
3 the Court (the “Motion”) for authority to continue its insurance programs. In support of this Motion,  
4 the Debtor relies upon the *Declaration of Joseph J. Passarello in Support of Chapter 11 Petition*  
5 *and First Day Motions* filed on the Petition Date (“Passarello Background Decl.”), the *Declaration*  
6 *of Joseph J. Passarello* filed in support of this Motion (“Passarello Decl.”), the *Declaration of Paul*  
7 *E. Gaspari in Support of Chapter 11 Petition and First Day Motions* (“Gaspari Decl.”) and all  
8 exhibits filed in support thereof.<sup>1</sup> In further support of this Motion, Debtor relies upon the following  
9 points and authorities:

10 **I.**

11 **JURISDICTION**

12 1. This Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and  
13 1334, and Local Rule 9014-1(f)(4). This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue  
14 is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory bases for the  
15 relief requested herein are Bankruptcy Code<sup>2</sup> sections 363(b), 1112(b) and 105(a).<sup>3</sup>

16 **II.**

17 **RELIEF REQUESTED**

18 2. By this Motion, the Debtor requests entry of an order, substantially in the form  
19 attached to this Motion as Exhibit 1 (the “Proposed Order”), pursuant to sections 363, 1112(b), and  
20 105 of the Bankruptcy Code, authorizing the Debtor to (i) continue administering the Insurance  
21 Programs (defined below) for the Debtor and Insurance Participating Entities (defined below), in  
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23 <sup>1</sup> Capitalized terms not otherwise defined in this Motion shall have the same meanings ascribed to  
24 them in the Passarello Background Decl., the Passarello Decl., and the Gaspari Decl.

25 <sup>2</sup> Unless otherwise indicated, all section references in this Motion are to 11 U.S.C. §§ 101, *et seq.*  
26 (the “Bankruptcy Code”).

27 <sup>3</sup> The RCASF does not, by filing its petition for relief and other documents in this Bankruptcy Case,  
28 waive any of its rights under any applicable law, including, without limitation, the Code of Canon  
Law, the First Amendment of the United States Constitution, the Constitution for the State of  
California, California’s law on corporations sole (California Corporations Code §§ 10000-10015),  
the Religious Freedom Restoration Act, the church autonomy doctrine, charitable trust law,  
California trust law, and the rights to object to disclosure of information and to contend that certain  
assets discussed in the Motion are not property of the estate.

1 the ordinary course of business and consistent with past practices; (ii) continue funding all  
2 premiums, contributions, deductibles, reserves, and service fees related to Insurance Coverage  
3 (defined below) and receiving reimbursement for same; (iii) renew, amend, supplement, extend,  
4 purchase, or terminate Insurance Coverage in the ordinary course of business; and (iv) pay any and  
5 all amounts related to the Insurance Programs that remained unpaid on the Petition Date (defined  
6 below). The relief requested includes payment of approximately \$330,000 of insurance  
7 contributions, deductibles, reserves and service fees related to pre-petition events or claims on an  
8 interim basis and a total of approximately \$1.2 million on a final basis.

### 9 III.

#### 10 BACKGROUND

11 3. On August 21, 2023 (the “Petition Date”), the RCASF commenced its chapter 11  
12 reorganization case by filing a voluntary petition for relief. The RCASF filed the Bankruptcy Case  
13 in order to reorganize its financial affairs pursuant to a plan of reorganization that will, among other  
14 things, fairly, justly, and equitably compensate survivors of sexual abuse by clergy or others  
15 associated with the RCASF and bring healing to survivors, parishioners and others affected by past  
16 acts of sexual abuse. The RCASF requires the bankruptcy court’s protection and the protection of  
17 the bankruptcy laws to make fair and equitable payment on all of the claims against it, including the  
18 claims by survivors of abuse, trade creditors and others, while continuing its ministries and the  
19 support it offers to Catholic parishes and communities. Additional detailed background information  
20 on the RCASF can be found in the Passarello Background Decl. and the Gaspari Decl.

21 4. In each diocesan bankruptcy where a plan of reorganization has been confirmed, the  
22 plan confirmed by the bankruptcy court was a pot plan negotiated through extensive mediation by  
23 and among the interested parties in the Bankruptcy Case, after exchanging information with  
24 statutory and/or other committees appointed by the Office of the United States Trustee (the “U.S.  
25 Trustee”) in those cases, which mediations settled disputes over what constituted property of the  
26 bankruptcy estate and provided for a settlement of the claims of abuse survivors. The RCASF  
27 intends to negotiate a pot plan of reorganization as early as possible which will: (a) allocate the  
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1 RCASF's remaining assets fairly among the legitimate competing interests for such property;  
2 (b) provide a process to fully, fairly and expeditiously liquidate claims of abuse survivors; and  
3 (c) permit the RCASF to carry on the RCASF's essential ministries and services so the RCASF can  
4 continue to meet the needs of the Non-Debtor Catholic Entities, parishioners, and others who rely  
5 on the RCASF's ministry, education, and charitable outreach.

6 5. Pursuant to sections 1107 and 1108, the Debtor continues to operate its business and  
7 manage its property as a debtor and debtor in possession. No trustee or examiner has been requested  
8 or appointed in the Bankruptcy Case.

9 **IV.**

10 **FACTUAL BACKGROUND FOR RELIEF REQUESTED**

11 6. As further discussed in the Passarello Background Decl., the RCASF provides  
12 certain administrative services and pooling arrangements for the various components of the RCASF,  
13 as well as for certain "Insurance Participating Entities" pursuant to certain service management  
14 agreements (collectively, the "Services Agreements") with certain of the Insurance Participating  
15 Entities, and otherwise pursuant to policy as to other Insurance Participating Entities. The RCASF  
16 receives fees for the services the RCASF provides under the Services Agreements. The Insurance  
17 Participating Entities included in the insurance programs are the Parishes, Schools, CASC, RPSC,  
18 Seminary, Cemeteries and the Catholic Charities. Passarello Decl., at ¶4.

19 7. In the ordinary course of business, the Debtor maintains various forms of insurance  
20 coverage ("Insurance Coverage") for itself and the Insurance Participating Entities. In order to  
21 maintain appropriate and cost-effective Insurance Coverage, the Debtor maintains certain insurance  
22 policies and participates in a risk-sharing pool (the "Insurance Programs"). Passarello Decl., at ¶5.

23 8. The Debtor and the Insurance Participating Entities are insured for property, general  
24 liability/casualty, equipment breakdown, terrorism, special crime, students' and volunteers'  
25 accident, cybercrime, fiduciary and excess liability coverage through multiple third-party insurers.  
26 Passarello Decl., at ¶6.

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1           9.       The Debtor's property insurance, subject to certain terms, coverage limits and  
2 exclusions, is provided by Allied World Assurance Company, Golden Bear Insurance Company,  
3 Westchester Surplus Lines Insurance, Lexington Insurance Company (AIG), Landmark Insurance  
4 Company (RSUI), Evanston Insurance Company (Markel), Arch Re, Aspen Re, AXIS Capital  
5 Insurance, Kinsale Insurance Company, Teas, Palms Insurance, General Star National Insurance  
6 Company, Lloyd's of London, Mitsui Sumitomo Insurance Company, Great American Insurance  
7 Group, and Homeland Insurance Company (collectively, the "Property Insurers"). The collective  
8 annual premiums to provide property coverage for RCASF and the Insurance Participating Entities  
9 through the Property Insurers for the coverage year beginning July 1, 2023, is \$2,167,444.  
10 Passarello Decl., at ¶7.

11           10.       The Debtor's casualty insurance, subject to certain terms, coverage limits and  
12 exclusions, is provided by (i) The National Catholic Risk Retention Group (SML, E&O, D&O, EBL  
13 & SBLL), (ii) Berkley Insurance company (E&O, D&O, EBL, SBLL), (iii) Allied World Assurance  
14 Company (GL & AU only), (iv) Great American Insurance Group (GL & AU only), and (v) Liberty  
15 Mutual Insurance (GL & AU only) (collectively, the "Casualty Insurers"). The collective annual  
16 premiums to provide casualty coverage for itself and the Insurance Participating Entities through  
17 the Casualty Insurers for the coverage year beginning July 1, 2023, is \$2,162,892. Passarello Decl.,  
18 at ¶8.

19           11.       Subject to certain terms, coverage limits and exclusions, The Hartford Insurance  
20 Company provides equipment breakdown coverage for the Debtor and the Insurance Participating  
21 Entities. The annual premium for equipment breakdown coverage for the coverage year beginning  
22 July 1, 2023, is \$39,614. Passarello Decl., at ¶9.

23           12.       Subject to certain terms, coverage limits and exclusions, Beazley Insurance provides  
24 terrorism coverage for the Debtor and the Insurance Participating Entities. The annual premium for  
25 this terrorism coverage for the coverage year beginning July 1, 2023, is \$94,916. Passarello Decl.,  
26 at ¶10.

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1           13.     Subject to certain terms, coverage limits, and exclusions, Travelers Insurance  
2 provides special crime coverage for the Debtor and the Insurance Participating Entities. The annual  
3 premium for special crime coverage for the coverage year beginning July 1, 2023, is \$5,864.  
4 Passarello Decl., at ¶11.

5           14.     Subject to certain terms, coverage limits, and exclusions, QBE Insurance Group  
6 provides students and volunteer accident coverage for the Debtor and the Insurance Participating  
7 Entities. The annual premium for students and volunteers accident coverage for the coverage year  
8 beginning August 1, 2023, is approximately \$72,000. Passarello Decl., at ¶12.

9           15.     Subject to certain terms, coverage limits, and exclusions, Beazley Insurance provides  
10 cyber coverage for the Debtor and the Insurance Participating Entities. The annual premium for  
11 cyber coverage for the coverage year beginning July 1, 2023, is \$41,885. Passarello Decl., at ¶13.

12           16.     Subject to certain terms, coverage limits, and exclusions, Chubb Corp. provides  
13 crime coverage for the Debtor and the Insurance Participating Entities. The annual premium for  
14 crime coverage for the coverage year beginning July 1, 2023, is \$29,350. Passarello Decl., at ¶14.

15           17.     Subject to certain terms, coverage limits, and exclusions, Travelers Insurance  
16 provides fiduciary coverage for the Debtor and the Insurance Participating Entities. The annual  
17 premium for fiduciary coverage for the coverage year beginning July 1, 2023, is \$22,234. Passarello  
18 Decl., at ¶15.

19           18.     Subject to certain terms, coverage limits and exclusions, GuideOne Insurance  
20 provides workers' compensation coverage for the Debtor and the Insurance Participating Entities.  
21 The premiums for workers' compensation coverage are paid quarterly for the coverage year  
22 beginning January 1, 2023, is approximately \$1,050,000. Passarello Decl., at ¶16.

23           19.     AJ Gallagher provides risk management and other insurance brokerage and support  
24 services, including a team of account executives and advocates, for the Debtor and Insurance  
25 Participating Entities. The annual service fee (the "Risk Management Fee") for these risk  
26 management services is approximately \$425,000 for the coverage year beginning July 1, 2023, paid  
27 annually. The Risk Management Fee is necessary as the risk management services provided by AJ  
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1 Gallagher are necessary for the Debtor and the Insurance Participating Entities to properly evaluate,  
2 select and continue to receive coverage, as well as to address insurance issues that may arise during  
3 a policy period. Passarello Decl., at ¶17.

4         20. The Debtor and the Insurance Participating Entities also receive services from  
5 Gallagher Bassett Services as a third-party administrator to address and evaluate property insurance  
6 claims. Among other things, Gallagher Bassett provides estimates for claims and related expenses.  
7 The fees for these services are included in the Gallagher Risk Management Fee. Passarello Decl.,  
8 ¶18.

9         21. The Debtor and the Insurance Participating Entities also receive services from  
10 George Hills Company as a third-party administrator to address and evaluate liability claims  
11 including auto liability and sexual misconduct. Among other things, George Hills Company  
12 provides estimates for claims and related expenses. The fees for these services are provided for an  
13 annual fee of approximately \$46,000. Passarello Decl., ¶19.

14         22. The Debtor is required to pay deductibles and other out-of-pocket costs up to certain  
15 amounts on a per-occurrence basis (“Insurance Deductibles”). The property and general  
16 liability/casualty policies for the Debtor provide for a self-insurance or retention levels of \$250,000  
17 to cover any such costs and generally pays the first \$250,000 of out-of-pocket expenses for any  
18 claims made by the Debtor. The Insurance Participating Entities other than Catholic Charities and  
19 the Seminary pay a \$2,500 deductible for each of their respective claims and the RCASF pays the  
20 balance of the Insurance Deductibles. Catholic Charities and the Seminary pay for their own  
21 Insurance Deductibles separately. For the coverage year ending June 30, 2023, the Debtor paid  
22 approximately \$1.6 million in Insurance Deductibles and out-of-pocket costs related to various  
23 claims covered by the Insurance Programs. Passarello Decl., at ¶20.

24         23. The Debtor pays the premiums for the Insurance Coverage, any Insurance  
25 Deductibles, and any service fees and other fees related to the Insurance Programs and recovers a  
26 portion of such payments by billing each Insurance Participating Entity an allocated portion of the  
27 total cost for such Insurance Coverage. The amount billed to each Insurance Participating Entity  
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1 takes various factors into account to fairly allocate costs and risk and ensure sufficient funding. For  
2 example, AJ Gallagher prepares invoices allocating the premiums for property insurance based upon  
3 square footage of the buildings insured. In addition to its allocated premiums, the RCASF includes  
4 in each Participating Entity's an administrative fee to recover certain costs, including broker's fees,  
5 property related services, legal, finance, human resources, security, child safety protection, and to  
6 account for retention and self-insurance coverages. Passarello Decl., at ¶21. The allocations and  
7 billing to the Insurance Participating Entities generally occurs in October or November of each year<sup>4</sup>  
8 and is remitted to RCASF by each Participating Entity over the course of the year. Although the  
9 timing of the payments received from the Participating Entities varies, the full amount billed is due  
10 by the end of June each year.

11 24. Currently, there are outstanding deductible payments due for pre-petition events,  
12 which, pursuant to the Debtor's current insurance policies, that the Debtor expects its insurers to  
13 demand payment of as a condition of continued coverage in the amount of approximately \$1.2  
14 million. Of this amount, approximately \$330,000 of insurance contributions, deductibles, reserves  
15 and service fees related to pre-petition events or claims may need to be paid within the first 30 days  
16 after the Petition Date. It is likely that other deductible payments will come due for pre-petition  
17 events as well. In the ordinary course of the Debtor's business and pursuant to the Insurance  
18 Programs, these deductible payments are paid from the Debtor's self-insurance reserves. Passarello  
19 Decl., at ¶22.

20 25. By this Motion, the Debtor requests entry of the Proposed Order, pursuant to sections  
21 363, 1112(b), and 105 of the Bankruptcy Code, authorizing the Debtor in the ordinary course of  
22 business to (i) continue administering the Insurance Programs for the Debtor and Insurance  
23 Participating Entities in the ordinary course of business consistent with past practices; (ii) continue  
24 funding all premiums, contributions, deductibles, reserves, and service fees related to Insurance  
25 Coverage and receiving reimbursement for same; (iii) renew, amend, supplement, extend, purchase,  
26 or terminate Insurance Coverage in the ordinary course of business; and (iv) pay any and all amounts  
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28 <sup>4</sup> Except that in 2023, the RCASF billed the Insurance Participating Entities in August 2023.

1 related to the Insurance Programs that remained unpaid on the Petition Date; *provided, however,*  
2 that no claims arising from, or in connection with, alleged pre-petition sexual misconduct may be  
3 paid other than pursuant to the terms of a confirmed reorganization plan or pursuant to further order  
4 of this Court.

5 V.

6 **BASIS FOR RELIEF REQUESTED**

7 **A. Insurance Coverage Is Required by the Bankruptcy Code and the U.S. Trustee**  
8 **Guidelines.**

9 26. Section 1112(b)(4)(C) of the Bankruptcy Code provides that “failure to maintain  
10 appropriate insurance that poses a risk to the estate or to the public” is “cause” for mandatory  
11 conversion or dismissal of a chapter 11 case. In addition, in many instances, the Insurance Coverage  
12 is required by the regulations, laws, and contracts that govern the Debtor’s activities, including the  
13 operating guidelines issued by the Office of the United States Trustee (the “U.S. Trustee  
14 Guidelines”). Accordingly, permitting the Debtor to continue to maintain its Insurance Coverage  
15 and amend, extend, renew, or replace its Insurance Coverage as needed, in its judgment, without  
16 further order of the Court, is essential to the Debtor’s estate and consistent with the Bankruptcy  
17 Code and the U.S. Trustee Guidelines have the authority to supplement.

18 **B. Section 363(c)(1) Permits the Debtor to Maintain Its Insurance Coverage and Make**  
19 **Expenditures Related Thereto in the Ordinary Course of Business.**

20 27. Section 363(c)(1) of the Bankruptcy Code provides, in relevant part, that a Debtor  
21 may enter into transactions, including the use, sale, or lease of property in the ordinary course of  
22 business, without notice or a hearing. In the alternative, “[t]he [debtor], after notice and a hearing,  
23 may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11  
24 U.S.C. § 363(b)(1). Under section 363(b), courts require only that a debtor “show that a sound  
25 business purpose justifies such actions.” *See In re Montgomery Ward Holding Corp.*, 242 B.R. 147,  
26 153 (D. Del. 1999) (citations omitted); *see also In re Phoenix Steel Corp.*, 82 B.R. 334, 335–36  
27 (Bankr. D. Del. 1987) (requiring “good business reason” for use of property under section 363(b)

1 of the Bankruptcy Code). Moreover, “[w]here the debtor articulates a reasonable basis for its  
2 business decisions (as opposed to a decision made arbitrarily or capriciously), courts generally will  
3 not entertain objections to the debtor’s conduct.” See *In re Johns-Manville Corp.*, 60 B.R. 612, 616  
4 (Bankr. S.D.N.Y. 1986); *In re Tower Air, Inc.*, 416 F.3d 229, 238 (3rd Cir. 2005) (“Overcoming the  
5 presumptions of the business judgment rule on the merits is a near-Herculean task”).

6 **C. The Court May Authorize the Debtor to Maintain Its Insurance Coverage and Make**  
7 **Expenditures Related Thereto Pursuant to Section 105(a) of the Bankruptcy Code and**  
8 **the Doctrine of Necessity.**

9 28. Pursuant to Bankruptcy Code section 105(a), courts have invoked the “necessity of  
10 payment” doctrine<sup>5</sup> to authorize the immediate payment of a debtor’s pre-petition obligations to  
11 unsecured creditors before plan confirmation when such payment is essential to the continued  
12 operation of the debtor in a chapter 11 reorganization. See *In re Columbia Gas Sys., Inc.*, 171 B.R.  
13 189, 192 (Bankr. D. Del. 1994) (to justify payment of one class of pre-petition creditors in advance  
14 of a confirmed plan, the debtor must show that payment is essential to the continued operation of  
15 the business); *In re Penn Cent. Transp. Co.*, 467 F.2d 100, 102 and n.1 (3d Cir. 1972) (pre-  
16 Bankruptcy Code case recognizing “necessity of payment” cases permitting immediate payment of  
17 claims of creditors where those creditors will not supply services or material essential to the conduct  
18 of the business until their pre-reorganization claims shall have been paid).

19 29. The Ninth Circuit has recognized the “necessity of payment” doctrine. In *Burchinol*  
20 *v. Cent. Wash. Bank (In re Adam’s Apple, Inc.)*, 829 F.2d 1484, 1490 (9th Cir. 1987), the Ninth  
21 Circuit discussed the existence of two competing “fundamental tenets” of bankruptcy: (1) equality  
22 in the treatment of all creditors; and (2) the rehabilitation of debtor. The court stated that the  
23 rehabilitation of a debtor “may supersede the policy of equal treatment” of creditors, and went on  
24 to describe such situations, specifically mentioning the payment of pre-petition wages and benefits  
25 to employees. *Id.* (“Cases have permitted unequal treatment of pre-petition debts when necessary  
26 for rehabilitation, in such contexts as (i) pre-petition wages to key employees; (ii) hospital  
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28 <sup>5</sup> Alternatively called the “necessity of payment” rule.

1 malpractice premiums incurred prior to filing; (iii) debts to providers of unique and irreplaceable  
2 supplies; and (iv) peripheral benefits under labor contracts.”).<sup>6</sup> Furthermore, the court went on to  
3 state that section 364(d), for example, “illustrates a Congressional willingness to subordinate the  
4 interests of pre-petition creditors to the goal of rehabilitation.” *Id.*

5 30. In its discussion, the *Adam’s Apple* court did not mention an earlier Ninth Circuit  
6 case, *In re B & W Enters., Inc.*, 713 F.2d 534 (9th Cir. 1983), which questioned whether the  
7 “necessity of payment” doctrine survived the 1978 changes to the Bankruptcy Code, and stated that,  
8 if it did, the court would apply the doctrine only to railroad cases “absent compelling reasons.” *Id.*  
9 at 537. Ultimately, the court in that case declined to apply the doctrine because the appellants had  
10 not presented “sufficient justification” for extending the doctrine to the (non-railroad) debtor. *Id.*  
11 Numerous courts throughout the country have held that the doctrine did survive the 1978  
12 Bankruptcy Code changes and can apply to non-railroad Debtor. *See In re Ionosphere Clubs, Inc.*,  
13 *supra*, at 175-176; *In re Just for Feet, Inc.*, 242 B.R. 821 (Bankr. D. Del. 1999); *In re Gulf Air*, 112  
14 B.R. 152, 153 (Bankr. W.D. La. 1989) (finding that payment of pre-petition wage and benefit  
15 obligations was in the best interests of creditors and necessary for the successful reorganization of  
16 the debtor, the court granted the debtor’s motion to pay pre-petition employee related expenses).  
17 Moreover, the *Adam’s Apple* court in its discussion did not limit the doctrine to railroad cases only.

18 **D. The Applicable Standards Permit the Court to Authorize Continuation of the**  
19 **Insurance Coverage and Insurance Programs.**

20 31. Here, the Insurance Programs provide an efficient, cost-effective way to procure  
21 necessary insurance for the Debtor and the Insurance Participating Entities. Satisfying possible  
22 outstanding or future obligations related to the Insurance Programs is warranted under section  
23 363(b) of the Bankruptcy Code and the above described applicable standards.

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27 <sup>6</sup> *See also In re Ionosphere Clubs, Inc.*, *supra*, at 176 (“The policy of equality among creditors...  
28 may be of significance in liquidation cases under Chapter 7, however, the paramount policy and  
goal of Chapter 11, to which all other bankruptcy policies are subordinated, is the rehabilitation of  
the debtor.”).



1           32.     The Debtor has routinely maintained Insurance Coverage and administered the  
2 Insurance Programs in the ordinary course of its operations and must continue to do so on a going  
3 forward basis in order to operate. Further, the Insurance Programs administered by the Debtor are  
4 typical for a Roman Catholic Archdiocese of its size and include standard coverages for nonprofits  
5 such as the Debtor and the Insurance Participating Entities.

6           33.     Continuation of Insurance Coverage is essential to preserve uninterrupted operations  
7 and the value of the Debtor's estate and is in the best interests of the estate and its creditors. Failing  
8 to maintain Insurance Coverage would impair the Debtor's ability to operate and potentially violate  
9 U.S. Trustee Guidelines and other applicable regulations and requirements, resulting in a material  
10 adverse effect on the Debtor and the value of the estate.

11           34.     In addition, because the Debtor carries Insurance Coverage and administers the  
12 Insurance Programs in the ordinary course of business, the Debtor submits that Court approval to  
13 continue existing policies, programs, and related payments postpetition is not necessary because of  
14 the authority granted by section 363(c) of the Bankruptcy Code. Nonetheless, out of an abundance  
15 of caution, the Debtor requests that the Court grant the relief requested in this Motion and enter the  
16 Proposed Order authorizing the continuation of the Insurance Coverage and Insurance Programs as  
17 consistent with the Debtor's operating needs, and to permit, but not require, the Debtor, in its  
18 discretion, to continue the Debtor's practices, programs, policies, and plans for Insurance  
19 Participating Entities as those practices, programs, policies, and plans were in effect as of the  
20 Petition Date, as may be modified, terminated, amended, or supplemented from time to time  
21 hereafter.

22           35.     Courts have routinely approved the maintenance of existing insurance programs in a  
23 variety of similar chapter 11 cases. *In re The Roman Catholic Bishop of Santa Rosa*, No. 23-10113  
24 (Bankr. N.D. CA June 8, 2023) [ECF 224]; *In re The Roman Catholic Bishop of Oakland*, No. 23-  
25 40523 (Bankr. N.D. CA June 9, 2023) [ECF 119]; *In re Roman Catholic Diocese of Harrisburg*,  
26 No. 20-00599 (Bankr. M.D. Pa. March 16, 2020) [ECF 118]; *In re The Roman Catholic Diocese of*  
27 *Rockville Centre, New York*, No. 20-12345 (Bankr. S.D.N.Y. Nov. 17, 2020) [ECF 165]; *In re The*  
28



1 *Roman Catholic Church of the Archdiocese of New Orleans*, No. 20-10846 (Bankr. E.D. La. June  
2 22, 2020) [ECF 176]; *In re The Norwich Roman Catholic Diocesan Corporation*, No. 21-20687  
3 (Bankr. D. Conn. Sept. 13, 2021) [ECF No. 236].

4 **VI.**

5 **RESERVATION OF RIGHTS**

6 36. Nothing contained in this Motion is intended to be or shall be construed as (i) an  
7 admission as to the validity of any claim against the Debtor, (ii) a waiver of the Debtor's or any  
8 appropriate party in interest's rights to dispute any claim, or (iii) an approval or assumption of any  
9 agreement, contract, program, policy, or lease under section 365 of the Bankruptcy Code. Likewise,  
10 if the Court grants the relief sought in this Motion, any payment made pursuant to the Court's order  
11 is not intended to be, and should not be construed as, an admission to the validity of any claim or a  
12 waiver of the Debtor's rights to dispute such claim subsequently.

13 37. Nothing contained in this Motion is intended to be or shall be construed as a waiver  
14 of any of the Debtor's rights under any applicable law, including, without limitation, the Code of  
15 Canon Law, the First Amendment of the United States Constitution, the Constitution of the State of  
16 California, California Corporations Code §§ 10000-10015, the Religious Freedom Restoration Act  
17 of 1993 (42 U.S.C. §§ 2000bb-2000bb-4), the church autonomy doctrine, charitable trust law,  
18 California trust law, and the Debtor's rights under any insurance policies and to proceeds thereof,  
19 and to object to disclosure of information and contend that certain assets discussed in this Motion  
20 are not property of the estate

21 **VII.**

22 **CONCLUSION**

23 WHEREFORE, the Debtor respectfully requests entry of the Proposed Order, pursuant to  
24 sections 363, 1112(b), and 105 of the Bankruptcy Code, as follows:

- 25 1. Authorizing the Debtor to continue administering the Insurance Programs for the  
26 Debtor and Insurance Participating Entities, in the ordinary course of business  
27 consistent with past practices, including the use of Gallagher Basset and George Hills  
28

1 in their capacity as third-party administrators (“Administrators”) of the Insurance  
2 Programs.

3 2. Authorizing the Debtor in the ordinary course of business to continue funding all  
4 premiums, contributions, deductibles, reserves, and service fees related to Insurance  
5 Coverage and receiving reimbursement for same from participants in the Insurance  
6 Programs;

7 3. Authorizing the Debtor in the ordinary course of business to renew, amend,  
8 supplement, extend, purchase, or terminate Insurance Coverage in the ordinary  
9 course of business;

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- 1           4.       Authorizing the Debtor and the Administrators to pay any and all amounts related to  
2                   the Insurance Programs that remained unpaid on the Petition Date and to continue to  
3                   pay any pre-petition and post-petition claims, premiums, deductibles, defense costs,  
4                   obligations, reimbursements and administrative costs related to the Insurance  
5                   coverage, in the ordinary course of business and in their sole discretion; *provided*,  
6                   *however*, that no claims arising from, or in connection with, alleged pre-petition  
7                   sexual misconduct may be paid other than pursuant to the terms of a confirmed  
8                   reorganization plan or pursuant to further order of this Court; and  
9           5.       For such other and further relief as the Court deems just and proper.

10 Dated: August 21, 2023

11                                   FELDERSTEIN FITZGERALD  
12                                   WILLOUGHBY PASCUZZI & RIOS LLP

13  
14                   By                                   /s/ Paul J. Pascuzzi                                    
15                                   PAUL J. PASCUZZI  
16                                   JASON E. RIOS  
17                                   THOMAS R. PHINNEY  
18                                   Proposed Attorneys for The Roman Catholic  
19                                   Archbishop of San Francisco

20 Dated: August 21, 2023

21                                   SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

22                   By                                   /s/ Ori Katz                                    
23                                   ORI KATZ  
24                                   ALAN H. MARTIN  
25                                   Proposed Attorneys for The Roman Catholic  
26                                   Archbishop of San Francisco  
27  
28

1 **EXHIBIT 1**  
2 **(Proposed Order)**

3  
4 UNITED STATES BANKRUPTCY COURT  
5 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION  
6

7 In re

8 THE ROMAN CATHOLIC ARCHBISHOP  
9 OF SAN FRANCISCO,

10 Debtor and  
Debtor in Possession.

Case No. 23-30564

Chapter 11

**INTERIM [PROPOSED] ORDER  
GRANTING DEBTOR'S EMERGENCY  
MOTION TO CONTINUE INSURANCE  
PROGRAMS**

Date: August 24, 2023

Time: 1:30 p.m.

Location: Via ZoomGov

Judge: Hon. Dennis Montali

*Hearing Requested on Shortened Time*

16 The emergency motion of The Roman Catholic Archbishop of San Francisco ("Debtor"), for  
17 an order authorizing the debtor to continue its insurance programs (the "Motion") came on for  
18 hearing on August 24, 2023, at 1:30 p.m., in Courtroom \_\_\_\_ of the United States Bankruptcy Court  
19 for the Northern District of California. The Debtor appeared through its counsel, Paul J. Pascuzzi  
20 of Felderstein Fitzgerald Willoughby Pascuzzi & Rios LLP and Ori Katz of Sheppard Mullin Richter  
21 & Hampton LLP. Other appearances were noted on the record. All capitalized terms used but not  
22 defined in this Order shall have the meanings given to them in the Motion.

23 The Court having considered the Motion, the *Declaration of Joseph P. Passarello in Support*  
24 *of Petition and First Day Motions* ("Passarello Background Decl."), the *Declaration of Joseph P.*  
25 *Passarello* in support of this Motion ("Passarello Decl."), the *Declaration of Paul E. Gaspari in*  
26 *Support of Chapter 11 Petition and First Day Motions* ("Gaspari Decl.") filed in support of the  
27 Motion, and the matters reflected in the record of the hearing, and the Court having found that it has  
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1 jurisdiction over this proceeding; that this is a core proceeding; that notice of the Motion has been  
2 given to the Office of the United States Trustee, the twenty largest unsecured creditors, all secured  
3 creditors, and any applicable governmental entities; that no further notice is necessary; that the relief  
4 sought in the Motion is in the best interests of the Debtor, its estate, and its creditors; and that good  
5 and sufficient cause exists for such relief,

6 Accordingly, it is hereby ORDERED pursuant to sections 363, 1112(b), and 105 of the  
7 Bankruptcy Code, as follows:

8 1. The Motion is GRANTED, on an interim basis, as set forth herein;

9 2. The Debtor is authorized in the ordinary course of business to continue administering  
10 the Insurance Programs for the Debtor and Participating Entities in the ordinary course of business  
11 consistent with past practices, including the use of the Gallagher Bassett Services and George Hills  
12 Company in their capacities as third party administrators (“Administrators”) of the Insurance  
13 Programs.

14 3. The Debtor is authorized in the ordinary course of business to continue funding all  
15 premiums, contributions, deductibles, reimbursements, reserves, and service fees related to  
16 Insurance Coverage and receiving reimbursement for same from participants in the Insurance  
17 Programs.

18 4. The Debtor is authorized in the ordinary course of business to renew, amend,  
19 supplement, extend, purchase, or terminate Insurance Coverage in the ordinary course of business.

20 5. The Debtor and Administrator are authorized in the ordinary course of business and  
21 in their sole discretion to pay any and all amounts related to the Insurance Programs that remained  
22 unpaid on the Petition Date, including payment of approximately \$330,000 of insurance  
23 contributions, deductibles, reserves and service fees related to pre-petition events or claims on an  
24 interim basis with a total of approximately \$1.2 million pending the final hearing on the Motion,  
25 and to continue to pay any prepetition and postpetition claims, premiums, deductibles, defense costs,  
26 obligations, reimbursements and administrative costs related to the Insurance coverage; provided,  
27 however, that no claims arising from or in connection with alleged prepetition sexual misconduct  
28 may be paid other than pursuant to the terms of a confirmed reorganization plan or pursuant to

1 further order of this Court.

2         6.       The Debtor is authorized to take such actions and to execute such documents as may  
3 be necessary to implement the relief granted by this Order.

4         7.       Notwithstanding the relief granted herein and any actions taken pursuant hereto,  
5 nothing herein shall be deemed: (i) an admission as to the validity of any claim against the Debtor;  
6 (ii) a waiver of the Debtor's rights to dispute any claim on any grounds; (iii) a promise or  
7 requirement to pay any claim; (iv) an implication or admission that any particular claim is of a type  
8 specified or defined hereunder; (v) a request or authorization to assume any agreement, contract or  
9 lease pursuant to section 365 of title 11 of the Bankruptcy Code; or (vi) a waiver of the Debtor's  
10 rights under the Bankruptcy Code or any other applicable law.

11       8.       The Court shall retain jurisdiction to hear and determine all matters arising from the  
12 implementation of this Order.

13                               **\*\*END OF [PROPOSED] ORDER\*\***